19 36

Department of Rev

OFFICE Board of Rev

STATION Madras

P.M. 1/183

Mis No. 1000.

Dated 18-3-36

A 1257/36

Procdgs to Govt. Pleader.
Despatched on 19-3-36

20 MAR 1936

Rec'd for encl on 20-3-36 and given

paper Pl. ack letter forwarded

Pages in the file

(SUBJECT.)

Suit (South Kanara) Sub-Court LA C Nos 2/34 and 7 & 8/35- award Aggn - Enhancement of Contribution - Appeals- sanction

Urgent.

Ref.B3-1299-34.

South Kanara Collector's Office,

Mangalore dated 11th March 1936.

From

E. M. Gawne, Esquire, I.C.S.,

Collector of South Kanara.

The Secretary,

Board of Revenue.

M a d r a s.

Sir,

Suits - Land Acquisition: L.A. Cases 2/34 and 7 & 8/35 of the Subordinate Court, South Kanara - enhancement of award - filing of appeal - sanction requested.

I request that the Board may be pleased to sanction the filing of an appeal in the High Court against the decision of the Subordinate Court of South Kanara in L.A. Cases 2/34 and 7 and 8/35 on its file, enhancing the amount of compensation awarded by the Revenue Divisional Officer, Mangalore to the Lord Bishop of Mangalore and Miss Mary Matilda Coelho in respect of five plots of Kasba Bazaar and Kodialbail A villages which were acquired in L.A. Cases 1 and 18 of 1933 on the file of the Revenue Divisional Officer.

2. The cases all relate to the acquisition which was undertaken at the instance of the Municipal Council, Mangalore for the widening of the Dongerkeri road, within the Municipality, near and at its junction with another road, the Thomson Road. The plots concerned in all the cases closely adjoin one another and measure 18,048 Sq. ft. in the aggregate. The tabular statement given below gives the details of the cases.

Revenue Divisional Officer's No.	Subordinate Court No	Plot acquired.	Date of award.	Owner.	Nature of buildings and other improvements on the plot.	Extent.
L.A.Case 1/33.	L.A.Case 2/34.	T.S. 22/1A1A 22/2A1 Kasba Bazaar village.	23-1-34	The Lord Bishop.	Nil (except a stone revetment which is not the subject of dispute)	3933 Sq.ft.

M51-3 gM

L.A.Case 18/33.	L.A.Case 7/35.	T.S. 22/2A2A of Kasba Bazaar.	17-4-35.	The Lord Bishop.	One substantial building.	4110 Sq.ft.
	L.A.Case 8/35.	T.S. 21/A of Kasba Bazaar and 171/2 of Kodialbail.	do.	Miss Mary Matilda Coelho.	Five small buildings.	10005 Sq.ft.
				Total. ...		18048 Sq.ft.

A perusal of the plan Exhibit E which is among the enclosures will show the position of the plots acquired as well as the position of the buildings situated in each.

3. All these three L.A. Cases which arose out of the references made under section 18 of the Land Acquisition Act by the Revenue Divisional Officer were disposed of by the Subordinate court of South Kanara on 6-12-1935 and in each case the compensation awarded by the Revenue Divisional Officer has been enhanced by the Subordinate Court as shown below.

L.A. Case.	Awarded by the Revenue Divisional Officer.			As enhanced by the Subordinate Court.			As claimed by the parties.
	Land.	Buildings.	Total.	Land.	Buildings.	Total.	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
7/34	426-13-3		426-13-3	519- 2-8		519- 2-8	1822-0-0
7/35	433-13-8	3243-0-0	3676-13-8	542-5-2	4391-9-0	4933-14-2	9414-0-0
8/35	1086-11-8	1099-6-5	2186- 2-1	1320-10-10	1349-8-5	2670- 3-3	8445-0-0
	1947- 6-7	4342-6-5	6289-13-0	2382- 2-8	5741-1-5	8123- 4-1	19681-0-0

The total enhancement in the three cases amounts to Rs. 1833-7-1 and it has been due to (1) the value of land being adopted by the Subordinate Court at Rs. 5000/- per acre instead of the rate of Rs. 4000/- per acre adopted by the Revenue Divisional Officer and (2) the value of buildings being adopted by the Court at the figures given by the Assistant Engineer of the Public Works

Department for the original cost of their materials, - ignoring the fact that the buildings were ricketv and old and that the Assistant Engineer had recommended depreciation to be allowed in each case.

The difference in the valuation of the buildings should have been greater still but apparently by over-sight, the Subordinate Court has failed to take into consideration building No. II appearing in Exhibits E and G which is one of the buildings standing on T.S. 21/A of Kasba Bazaar village which was the subject of L.A. Case 8/35 The reasons for the difference in the valuations of the buildings by the Revenue Divisional Officer and by the Court can be easily seen by a reference to columns 12 and 13 of Exhibit G. The Revenue Divisional Officer has adopted the figures in column 13; the Subordinate Court adopted the figures in column 12 but overlooked item 2.

4. The reasons for this enhancement by the Court have been discussed by it in a long and elaborate judgment which covers all the three cases. A perusal of this document will show that the Court has lost its way to a correct decision amidst a labyrinth of conflicting and irrelevant arguments. I agree with the Government Pleader who said that the conclusions were queer the Court's own arguments do not support those conclusions. The Municipal Council at whose instance the acquisitions were undertaken desires that appeals should be filed in all the three cases, as arbitrary decisions of this sort will if allowed discourage the pursuit of all Town Planning and road-extension schemes on its part. I enclose a copy of the resolution (No.43 dated 13-2-36) of the Council with copies of my letters dated 20-1-36 and 24-1-36 inviting its opinions.

5. Apart from the merits of the award, it is curious to note in each of these cases that the Subordinate Court while it felt compelled to dismiss the major portion of the parties' claims as exaggerated and frivolous, yet directed that each party should bear its own costs. These costs amount in all the three cases

	Rs as ps
together to Vakil's fees	484-14-1
Costs incurred	54- 7-0
Total	539- 5-1

They are no inconsiderable burden on the finances of the Municipal Council, already affected by the arbitrary enhancement of the compensation.

6. The Government Pleader, Mangalore consulted by me advises that appeals should be filed in these cases. I enclose copies of his letters dated 14-1-1936 and 18-1-1936 discussing all the aspects of the case with a copy of the grounds of appeal drafted by him. The Commissioner of the Municipal Council states that the Pleader whose advice is always sought by the Council has seen these grounds and approved of them.

(G) Rp 7-9-6

7. The connected records are enclosed (A list is appended). I request that early orders may be passed, as the appeal time will expire on 27-3-1936.

Your obedient servant,

Collector.

12.3.36

List of enclosures.

1. Grounds of appeal - two copies.
2. Certified copies of Judgment in L.A.C. 2/34 and 7 & 8/35 with decrees and a spare typed copy of each of these documents.
3. Copies of Award in L.A.C. 1/33 and 18/33 of the Revenue Divisional Officer, Mangalore with copies of the Award proceedings.
4. Copies of letters Ref. A 21/36 dated 14-1-1936 and 18-1-36 of the Government Pleader, Mangalore.
5. Certified copy of deposition of Mr. J.P. Sequeira R.W. 1.
6. Certified copy of deposition of Mr. C.L.Lobo R. W. 2.
7. do. Rev. Fr. Casmir Minezes - R.W.3.
8. do. Mr. Francis Alvares R.W.4 with a translation.
9. do. Mr. Siva Rama P.W.1
10. do. Mr. B. Vaikunta Baliga P.W.2
11. do. Mr. Gopalkrishna Rao P.W. 3
12. Precis of depositions of P.W. 4 and 5 and R.W. 5.
13. Copies of exhibits D, E, F, G and G 1.
14. Copies of resolutions (45 dated 15-2-35) of the Municipal Council, Mangalore and of Collector's letters dated 20-1-36 and 24-1-36 to the Commissioner of the Municipality.

South Kanara Collector's office.
Mangalore, dated 11 - 3 - 1936.

Buadhavarao 13/3
For Collector.

Book
13.3.36

Grounds of appeal.

1. The Judgment of the Lower Court in so far as it is appealed against is contrary to law the facts of the case and the evidence on record.

2. The Lower Court erred in fixing the value of land at Rs. 5,000-0-0 per acre.

3. Having rightly held that the market value of the land is to be fixed having regard to the previous sales of the land in question or the sales of similar land in the vicinity, and having come to the conclusion on the evidence on record on these points that the fair value of the land is Rs. 4,000-0-0 per acre the Lower Court erred in allowing an extra Rs. 1,000-0-0 per acre.

4. The ground on which the Lower Court has allowed this extra allowance is neither sound nor satisfactory.

5. The Lower Court failed to see that in fixing the value of land at Rs. 4,000-0-0 per acre the adaptability of the land as shop sites has also been taken into consideration.

6. Having rightly found that there were shops in the locality unoccupied the Lower Court erred in thinking that this factor could in any way enhance the value of the land.

7. The Lower Court failed to attach due weight to the circumstance that the advantage, if any, of the land acquired, is now transferred to the land that is left unacquired and which is now pushed to the front.

8. The Lower Court failed to attach due weight to the circumstance that the importance of the land was on account of the bus stand being located near the site and which was done only after the notice for the acquisition was given.

9. Having rightly held that Exhibit G affords the safest basis for fixing the value of the buildings, the Lower Court erred in not making allowance for depreciation of buildings

as done by the Sub Divisional Officer P.W.D.

10. The Lower Court erred in allowing the claimants the amounts shown in column 12 of Exhibit G which is the cost of new materials for constructing the buildings thereon.

11. The Lower Court failed to see that the buildings were old and rickety and that their materials would not naturally now be worth the original cost of construction.

12. The Lower Court ignored the evidence of P.W.'s 3 to 5 and R.W.S. 2, 3 and 5 on the present condition of the buildings.

13. In the circumstances of the case the Lower Court erred in asking each party to bear his or her own costs.

14. The Lower Court failed to see that the claimants had only succeeded to a very small extent and ought to have allowed the appellant his full costs.

15. Prays therefore that this appeal may be allowed and the claim for enhancement of the respondent dismissed with costs throughout.

(True Copy)

For Collector.

11 Appeal time expires on 27-3-36

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying		
When copied		
When examined		
When signed		
When despatched.		

SUBJECT :— Suits (South Kanara) ~~Mangalore~~ Sub-Court - L.A.C Nos 2/34 and 7 and 8/35 - Land Acquisition - Enhancement of compensation - filing of appeals - sanctioned.

READ AGAIN _____, dated _____ 19____

" " _____ " _____ 19____.

READ *ALSO* :—

No. _____ From the _____, No. _____, dated _____ 19____.

" _____ " Mp 1-4 cf. A1257/36 " Q " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

~~Order~~ / Resolution ~~Ms. Roul.~~ No. 1000, dated 18 3 19 36.

A copy of the letter read above, from the Collr of S. Kanara ~~forwarding~~ and its enclosures are forwarded to the Govt Pleader, Madras who is requested to file appeals in the High Court against the decrees ~~of the Sub Court of S. Kanara~~ in L.A.C Nos 2/34 and 7 and 8/35 on the file of the Sub-Judge, South Kanara after revising if necessary, the draft grounds of appeal prepared by the local Govt Pleader. The appeal time expires on 27-3-36.

The G.P. Madras is

requested to obtain any further information or records required by him direct from the Collr of S. Kanara.

3/ The attention of the Collr of S. Kanara is invited to para 3 of B.S.O. No 95.

17/2/26

RB 17/3
17.3.26

J.S. 17.3

17.3.

18.3

To The Govt Pleader Madras

with records as per list and a copy of the Collr's letter.

* Pl copy the Lr at p 5 c/f

To The Collr of S. Kanara.

19.3

(Proper Pl. ask question for ...)

Of

The total enhancement in all the three cases amounts to Rs 1:33-7-1. The Municipal Council on whose behalf the lands were acquired, the local G.P. and the Collr consider that appeals should be filed in all the three cases. Hence the draft.

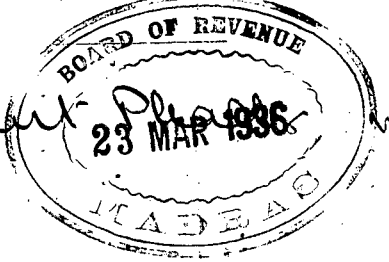
RB 17/3.

OFFICE OF THE Government Pleader

Dated 20. 3. 1936

Hours Minutes.

POST copy TELEPHONIC MESSAGE.



From Government Pleader Madras

To Superintendent,
Board of Rev L.R. & Sett

Ref:- Suits - (South Kanara) - Suit court L.A.C. Nos 2 of 34, and 7 & 8 of 35 - Land acquisition - Enhancement of compensation - filing of appeals.

(J) B. P. Misc. No. 1000 of 18. 3. 36

The enclosures to the above B. P. have not been received in this office. Kindly ~~send~~ ~~those~~ send them if not already sent

Duddpala Manager.

15

D1365

Urgent.

Ref.B3-1299-34.

South Kanara Collector's Office,
Mangalore, 19th March 1936.

S. Venkateswaran, Esq., I.C.S.,
Collector of South Kanara.

To

The Secretary,
Board of Revenue,
M a d r a s.

Mis/1000
18-3-36

Sir,

Suits - Land Acquisition - L.A.Cases 2/34 and 7 & 8/35 of the Subordinate Court, South Kanara - appeal to High Court.

Pp 1-4 J My letter Ref.B3-1299-34, dated 11.3.1936.

I invite attention to paragraph 6 of my letter of 11th March 1936. The Municipal Council of Mangalore met on 9th March 1936 and it has at that meeting adopted the grounds of appeal drafted by the Government Pleader, Mangalore. I enclose a copy of its resolution (No.30, dated 9.3.1936) which was received by me on 17th March 1936.

Encl.

Your obedient servant,

Sundhavarao 19/3
For Collector.

19.3.36.

Extract from the Proceedings of the Mangalore Municipal Council dated 9th March 1936.

Present:-

xx xx xx

30. Read letter Ref. B3-1299/34, dated the 22nd February 1936 from the Collector of South Kanara, requesting to send a copy of the Council's resolution sanctioning the sum of Rs.554.5.1 the total cost the Council has to pay to Government in L.A.Cases 2/34 and 7 & 8/35 of the Sub Court South Kanara, and letter dated the 24th February 1936 on the same subject and the Commissioner's Note thereon.

Grounds of appeal are adopted. Regarding the fee claimed by the Government Pleader and other matter is made to lie over for consideration at the next meeting.

xx xx xx

/True Copy/

Municipal Office,
Mangalore, 14.3.1936.

Sd/- xx xx xx xx
Commissioner Delegate.

sradhavarao
For Collector. 19/3

19.3.36

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying		
When copied		
When examined	24/MAR/1936	
When signed		
When despatched	DESPATCHED 25 MAR 1936	

SUBJECT :— Suits (South Kanara) Sub-Court S.Kanara - L.A.C Nos 2/34 and 7 and 8/35 - Land Acqn. - Appeals - further report from Collr - forwarded to G.P. Madras.

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO* :—

No. _____ From the _____, No. _____, dated _____ 19____.

" _____ ff 3-4 of A 1365/36 " _____ " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

Order ~~Ms.~~ No. ~~, dated~~ Rndt A 1365/36 dy 25-3-36.
esolution ~~Rout.~~

W.V.O 25/3

Forwarded to the Govt Pleader Madras in continuation of B.P. Mrs 1000 dy 18-3-36.

pp 11-12 of (J)

To The Govt Pleader Madras with Collr's letter & encl

pp 7-10 of to be sent

Copy to ~~the~~ Collr of S.Kanara. (para 1 only) 25.3

2/ The encls were separately despatched to the B.P. vide reference K on 20-3-36

25/3/36

25/3

25/3

(para 1 only)

On the encls referred to in the T.M. from the G.P at pp of were despatched to him separately on 20-3-36 - Pl. in docket in the B Part (J)

This Rndt may be attached with the B Part (J) after issue

25/3

DEPARTMENT.

#1445

Received BOARD OF REVENUE 28 MAR 1936 MADRAS 19 Registered 19

Subject.

Suits (South Kanara) - Sub Court - L.A.C.Nos. 2/34 and 7 & 8 of 1935 - Land Acquisition - Enhanced compensation - ~~fixing~~ appeals filed.

ENCLOSURES:
No.
Spare copies

No. 365

Station Madras. *Dated the* 26th March 1936. 19

From (Name) M.R.Ry., K.S.Krishnaswami Iyengar Avl.,
(Designation) Government Pleader,
Madras.

To The Secretary to the Government of Madras,
Revenue Department.

Sir,

With reference to G.O.Mis.No.1315, Revenue, dated 29th August 1923, I have the honour to state that three parcels of land were acquired by Government for the purpose of widening of the Dongerkery Road in South Kanara and the Land Acquisition Officer awarded compensation at the rate of Rs.4000/- per acre. The claimants not being satisfied with the said award applied for a reference to Civil Court under Sec. 18 of the Land Acquisition Act for determination of the amount of compensation payable to the owners of the lands acquired The

references were heard by the Subordinate Judge, South Kanara, who fixed the compensation payable to the claimants at Rs.5000/- per acre. Against this enhanced award, under instructions from the Board of Revenue in B.P.Mis.No.1000, dated 18-3-1936, I have this day preferred three appeals to the High Court against L.A.C.Nos. 2/34 and 7 & 8 of 1935 on the file of the Sub Court, South Kanara.

I have the honour to be,
Sir,
Your most obedient servant,

Sd.K.S.Krishnasami Iyengar.

Government Pleader.

No. 366.

Copy communicated to the Secretary to the Board of Revenue, Land Revenue & Settlement, for information with reference to B.P.Mis.No.1000, dated 18-3-36.

The Board is requested to instruct the Collector of South Kanara to send me a sum of Rs.264-9-0 being the amount spent by me in stamps and stamp papers in preferrring the above appeals.

K. S. Krishnasami Iyengar

Madras, 26-3-36.

Government Pleader.

C.F. 16.

DRAFT FOR APPROVAL. 23

	Date.	Initials.
When received for fair copying		
When copied		
When examined		
When signed		
When despatched.		

DEST APR 1936

SUBJECT :— Sunto (South Kanara) Sub-Court. L.A.C. Nos 2/3 and 7 and 8/35 - Land Reg/ - Enhancement of Compensation - Appeals - filed - G letter Comm

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO* :—

No. _____ From the _____, No. _____, dated _____ 19____.

~~" 512 Cf.~~ Letter from the G.P. Madras No 366 Rg 26-3-36 — A with encl

" _____ " _____ " _____ " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

~~Order Ms. Resolution Rout.~~ No. _____, ~~dated~~ Endt A 1445/36 Rg 31-3-36.

Communicated to the Collr of S. Kanara.

2. The attention of the Collr is invited to para 2 of the G.P's letter read above, for necessary action

31/3/36

RG
30/3/36

BOARD OF REVENUE
2- APR 1936
ADRA

GOVERNMENT OF MADRAS

25

A 1578

Revenue Department.

SECY.
2- APR 1936

From the Government Pleader, Madras, No.365, dated the 26th March 1936.

Suits (South Kanara) - Sub Court - L.A.C.Nos.2/34 and 7 & 8 of 1935 - Land Acquisition - Enhanced compensation - Appeals filed.

With reference to G.O.Mis.No.1315 Revenue, dated 29th August 1923, I have the honour to state that three parcels of land were acquired by Government for the purpose of widening of the Dongerkery Road in South Kanara and the Land Acquisition Officer awarded compensation at the rate of Rs.4000/- per acre. The claimants not being satisfied with the said award applied for a reference to Civil Court under Section 18 of the Land Acquisition Act for determination of the amount of compensation payable to the owners of the lands acquired. The references were heard by the Subordinate Judge,South Kanara, who fixed the compensation payable to the claimants at Rs.5000/- per acre. Against this enhanced award, under instructions from the Board of Revenue in B.P. Mis.No.1000, dated 18th March 1936, I have this day preferred three appeals to the High Court against L.A.C.Nos.2/34 and 7 & 8 of 1935 on the file of the Sub Court,South Kanara.

fp11-1204 (E)

Endorsement No.1471 B/36-1, dated 31st March 1936.

BOARD OF REVENUE
7 - NOV 1938
MADRAS

GOVERNMENT OF MADRAS

27 - 45655

Revenue Department.

SECY. 7-11-38

Read:-

From the Government Pleader, Madras No. 905 dated the 20th October 1938.

With reference to G.O. No. 773 Home (Judl.), dated the 20th March 1920 and G.O. Mis. No.2255, Revenue, dated the 14th September 1920 and in continuation of this office letter No.365, dated 26-3-1936 intimating the filing of the above appeals - - against the enhanced award of the Subordinate Judge of South Kanara in L.A. C.Nos. 2/34 and 7 & 8/35 on his file, I have the honour to state that the above appeals preferred by Government came on for hearing before their Lordships Varadachariar and Abdur Rahman JJ. to-day, when their Lordships dismissed the appeals but in the circumstances without costs.

I am of opinion that nothing further need be done in the matter here.

****

Endorsement No.5401 B/38-2 dated 3rd November 1938.

Communicated to the Board of Revenue for information in continuation of Endt. No. 1471 B/36-1 dated 31st March 1936.

S.J.Augustus,
Assistant Secretary to Govt.

To the Board of Revenue.

Forwarded.

(By order)

P Krishnan 5/11/38.

Superintendent.

A.K. A-S(Sult)

Recorded & stitched with B.P at (N)

21/11/38

15.11.38 21/11/38